IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 1 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
SAURASHTRA SOLVENT EXTRACTIONSPVT.LTD. - Respondent(s)

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Appearance :
Mr.Sunit S.Shah,learned G.P. with Ms.Mini Nair,learned AGP for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/06/2007

ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. At the instance of the Revenue, the Gujarat Sales Tax Tribunal at Ahmedabad has referred the following two questions of law for the opinion of the High Court under Section 69 of the Gujarat Sales Tax Act, 1969 (“The Act” for short):

1. “Whether on the facts and in the circumstances of the case, the Tribunal was right and justified in law in allowing the revision application by setting aside the order of the learned Assistant Commissioner of Sales Tax, whereby it was held that process of converting raw cotton-seed oil into refined cotton-seed oil was a process of manufacture and sales of cotton-seed oil cannot not be treated as R.D. resales?”

2. “Whether on the facts in the circumstances of the case, the Tribunal was right in holding that the effect of the decision of the Tribunal is prospective, meaning thereby that it does not apply to the transactions carried out earlier?”

2. The background facts giving rise to the present Reference are that the assessee M/s.Saurashtra

Solvent Extraction Company Pvt.Ltd. was carrying on the business of running an Oil Mill and Oil Extraction Plant. It used to purchase raw cotton-seed oil from registered dealers. After converting the raw cotton-seed oil into refined oil, the assessee used to sell the same as refined oil. During the period with effect from 1.9.1977 to 30.8.1978, the assessee purchased raw cotton-seed oil from the dealers and after converting it into refined oil, sold the same and claimed deduction under Section 7(ii) of the Act. Section 7(ii) of the Act deals with resales of goods purchased by a dealer from a registered dealer. The assessment order for the assessment year 1981-82 was passed by the Sales Tax Officer on July 28,1981, treating the sales as re-sale of goods purchased by the assessee from registered dealers and thereby allowing the deduction claimed by the assessee.

3. Before the assessment in respect of the assessee was completed, the Tribunal had rendered a judgment in the case of **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat** in Appeal No.8 of 1979 on April 16,1981, taking the view that the conversion of raw cotton-seed oil into refined cotton-seed oil is a

process of “manufacture” and, therefore, it cannot be considered as a re-sale of goods purchased by a dealer from a registered dealer.

4. Section 67 of the Act empowers the Commissioner of Sales Tax to exercise suo motu revision powers if he comes to the conclusion that the order of the assessing officer is either erroneous or illegal. In view of the decision of the Tribunal in the case of **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat(Supra)**, the Commissioner of Sales Tax was of the view that the order of the Assessing Authority was erroneous and not in accordance with law. Therefore, he resorted to suo motu exercise of revisional powers under Section 67 of the Act. The Revisional Authority came to the conclusion that the process of refining the raw cotton-seed oil into refined oil was a process of “manufacture” and the sales of refined cotton-seed oil should not be treated as re-sale of goods purchased by a dealer from a registered dealer. He, therefore, modified the order of the Sales Tax Officer as far as deduction claimed by the assessee was concerned by passing order dated 20.11.1986. However, the the Revisional

Authority allowed the set-off under Rule 42 of the Gujarat Sales Tax Rules, 1970 in respect of the tax paid on the purchase of raw cotton-seed oil.

5. Feeling aggrieved by the order of the Revisional Authority, the assessee invoked the revisional jurisdiction of the Gujarat Sales Tax Tribunal at Ahmedabad. The Tribunal took the view that the earlier order of the Tribunal in the case of **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat (Supra)** operated prospectively and would only apply to those transactions effected after the date of the said order and not to the transactions carried out earlier. In view of this conclusion, the Tribunal restored the order of the Sales Tax Officer, which has given rise to the instant reference.

6. This Court has heard Ms.Mini Nair, learned AGP, for the applicant. The record indicates that the assessee has been duly served. However, it is not represented before this Court either through lawyer or through its constituted agent. This Court has perused the documents forming part of the paper-book of the instant Reference.

7. In order to resolve the controversy giving rise to the first question posed for the opinion of this Court, it would be relevant to examine whether the process of converting raw cotton-seed oil into refined cotton-seed oil is a process of “manufacture” or not? In order to elucidate this point, Ms.Mini Nair, learned AGP has brought to the notice of this court judgment of the Supreme Court in **B.P.Oil Mills Ltd. v. Sales Tax Tribunal and others (1998)6 SCC 577**. In that case, the appellant used to purchase crude oil of different varieties such as linseed oil, castor oil, mustard oil and, after refining the same, sold it as refined oil. The process of refinement involved treating the oil with alkali to remove the acid contents and then bleaching it with absorbent cotton or activated carbon and lastly deodorising it with steam. The Supreme Court rejected the Oil Mill's contention that mere processing of the crude oil for its conversion into refined oil could not be said to be “manufacture” of new goods so as to make the appellant liable for tax. The Supreme Court has held as under, in para 7 of the reported judgment:-

> “7. The word “processing” has, however, not been defined under the Act but it has been

the subject-matter of interpretation by this court in various cases including that of Chowgule and Co. (P) Ltd. v. Union of India. Taking a cue from the definition of the word “process” in the Webster's Dictionary, this Court observed therein that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market, it would amount to processing. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but in each process suffered, the commodity would experience a change. This Court further observed that whatever be the means employed for carrying out the processing operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing. Viewed in the context of the above meaning given to the word “processing” by this Court, there cannot be any manner of doubt that the nature and extent of the process to which the crude oil is subjected to make it refined oil brings the latter within the meaning of the expression “goods manufactured” in Section 3(3)(b)(iii) of the Act so as to make the appellant liable to pay tax on its sale.”

8. Ms. Mini Nair, learned AGP, has submitted that

the record does not indicate that the assessee had produced any material on record to show that the process undertaken by it for converting raw cotton-seed oil into refined oil was different from the one described in the judgment of the Supreme Court so as to take it out of the definition of “manufacture”. She has submitted that since the process of conversion of raw oil into refined oil was considered to be “manufacture” by the Supreme Court in the aforesaid judgment, the same principle will apply to the facts of the present case and, therefore, the process of converting raw cotton-seed oil into refined cotton-seed oil by the assessee has to be regarded as a process of “manufacture”. In view of the authoritative pronouncement of the Supreme Court in **B.P.Oil Mills Ltd. v. Sales Tax Tribunal and others (Supra),** referred to hereinabove, this Court is of the opinion that the Tribunal was not justified in coming to the conclusion that the process of converting raw cotton-seed oil into refined cotton-seed oil was not a process of “manufacture”.

9. The second question which falls for

consideration of this court is whether the earlier judgment of the Tribunal in **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat (Supra)** operated prospectively i.e. after the decision therein on 16.4.1981 and, therefore, the completed transactions prior to this date were not affected by the operation of the principle laid down therein.

10. The question whether the interpretation of a legal provision relates back to the date of the law itself is no longer res integra. It is a well settled principle of law that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment. In order to substantiate this submission, Ms.Mini Nair, learned AGP, has relied upon **Lily Thomas and others v. Union of India and others (2000)6 SCC 224** and **M.A.Murthy v. State of Karnataka and others (2003)7 SCC 517**. In **Lily Thomas** (Supra) the Supreme Court has observed as under:

> “We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal case cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid

> down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law".

The said principle has been reiterated in **M.A.Murthy v. State of Karnataka and others(Supra).**

11. In a recent judgment titled **P.V.George and others v. State of Kerala and others,** reported in **(2007)3 SCC 557** the Supreme Court has held that the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically. In view of the authoritative pronouncement of the Supreme Court, it is now well settled that normally a decision of a court or Tribunal enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the court or Tribunal is, in fact, the law from its very inception. It would, therefore, not be open to hold that a decision in a particular case will be

prospective in its application. The doctrine of binding precedent promotes certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the Tribunal was in error in holding that its earlier judgment in **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat (Supra)** will have prospective application and have no effect upon the completed transactions, which took place prior to its pronouncement.

12. In view of the aforesaid discussion, this court is of the opinion that the Tribunal was not justified in coming to the conclusion that the process of converting raw cotton-seed oil into refined cotton-seed oil was not a process of “manufacture”. Similarly, the Tribunal fell into error in coming to the conclusion that the earlier decision of the Tribunal in **M/s. Sanjay Oil-Cakes Industries v. The State of Gujarat (Supra)** will have prospective effect and not apply to the transactions carried out earlier. Both the questions referred to this Court

for opinion are answered in the negative i.e. in favour of the revenue and against the assessee .

13. Accordingly, the Reference stands disposed of. There shall be no orders as to costs.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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